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## I. STATEMENT OF THE CASE

Petition No. S-2789, filed on December 15, 2010, seeks a special exception, pursuant to §59-G-2.00 of the Zoning Ordinance, to permit an accessory apartment use in the basement of an existing single-family home located at 20601 Boland Farm Road, Germantown, Maryland, on land in the R-200 (Residential, One-family, Detached) Zone. The property's legal description is Lot 36, Mary J. Boland subdivision. The tax account number is 09-03379605.

The Hearing was scheduled for February 25, 2011, by notice dated November 4, 2010 (Exhibit 11). Technical Staff at the Maryland-National Capital Park and Planning Commission (M-NCPPC), in a report issued February 10, 2011, recommended approval of the special exception, with conditions. Exhibit 12.<sup>1</sup>

The Department of Housing and Community Affairs (DHCA) inspected the property on February 7, 2011. Housing Code Inspector Mariana Butler reported her findings in a memorandum dated February 22, 2011 (Exhibit 13). Attached to her report were numerous photographs of the premises (Exhibit 13). The inspector concluded that the apartment contained 1,407 square feet.

A public hearing was convened as scheduled on February 25, 2011, and Petitioners appeared *pro se*. Also testifying was Inspector Robert Goff, Housing Inspector with the DHCA. Mr. Goff had assisted Ms. Butler with the inspection because Ms. Butler had been unable to attend the hearing. T. 6. Petitioners executed an affidavit of posting (Exhibit 14), and supplied a record from the Maryland State Department of Assessments and Taxation which listed Petitioners as owners of the property. (Exhibit 12, Attachment C). They adopted the findings in the Technical Staff Report (Exhibit 12) as Petitioners' own evidence (Tr. 6). They also agreed to meet all the conditions set forth in the Technical Staff Report and the Housing Inspector's report. Tr. 6, 9.

As noted, the Housing Inspector reported that the apartment measured 1,407 square feet,

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<sup>1</sup> The Technical Staff report is frequently quoted and paraphrased herein.

above the maximum 1,200 square feet permitted by the Zoning Ordinance. T. 16. The record was held open till March 30, 2011, to permit the Petitioners to submit revised floor plans. The revised floor plans were not submitted until April 18, 2011; therefore, the record was re-opened until June 3, 2011, to receive the revised floor plans and to permit sufficient time for Technical Staff to review the revised plans. Exhibit 17. Technical Staff reported that they had no objection to the revised plans. Exhibit 19. The record closed, as scheduled, on June 3, 2011.

There is no opposition to this special exception, and the petition meets all of the statutory criteria. The Hearing Examiner therefore recommends that the petition be granted, with conditions.

## **II. FACTUAL BACKGROUND**

### **A. The Subject Property and the Neighborhood**

The subject property is located at 20601 Boland Farm Road, Germantown, Maryland, in the southeast corner of the intersection of Boland Farm Road and Observation Drive. The home is in the R-200 Zone, on a 35,982 square-foot lot, as shown in a photograph included in the Technical Staff Report (Exhibit 12, p. 3) shown below:

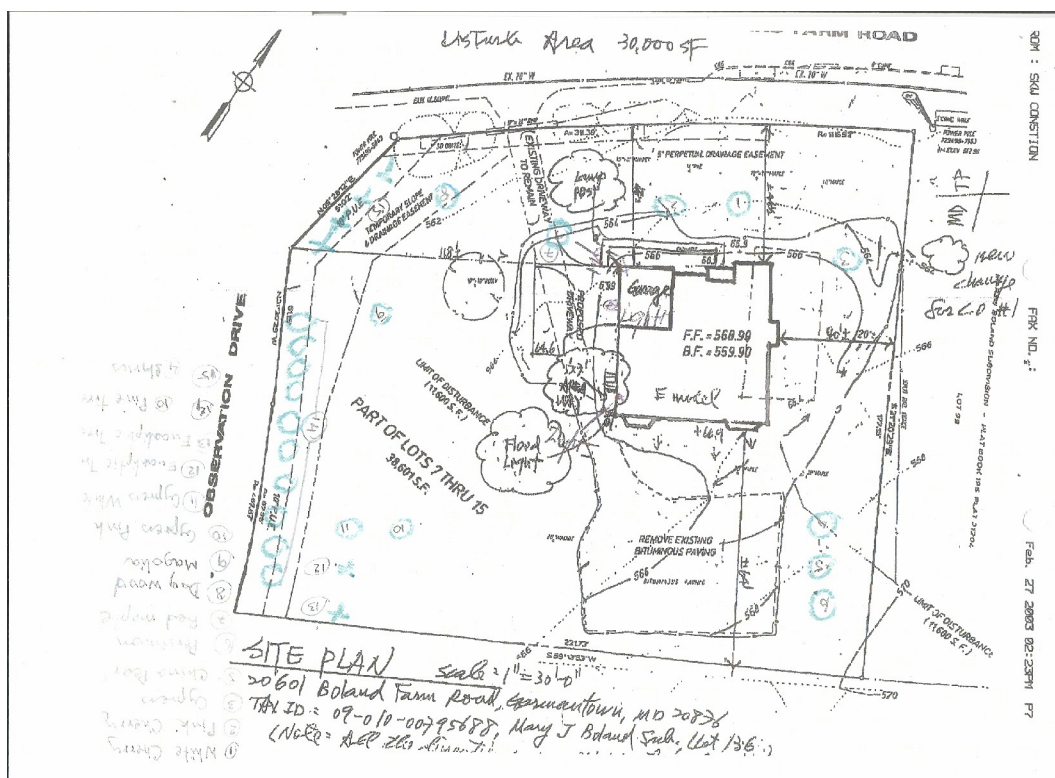


Technical Staff defined the boundaries of the surrounding area as being Observation Drive to the west, single-family homes confronting Boland Farm Road to the north and south, and Frederick Road to the east, as shown in a photograph from the Technical Staff Report (Exhibit 12, p. 4) shown below. Technical Staff advises that the homes within the neighborhood are single-family detached dwellings. Exhibit 12, p. 4.



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The location of existing landscaping is shown below on the Landscape Plan (Exhibit 5), shown on the next page.



The Petitioners propose no external changes to the property if the special exception is granted (Exhibit 12, p. 3). According to the Housing Inspector (Exhibit 13), the existing driveway (shown in a photograph from the Technical Staff Report (Exhibit 12)) may accommodate between 8-10 vehicles:



### **B. The Proposed Use**

The Petitioners are seeking a special exception to allow an accessory apartment in the basement of their existing home. A separate entrance to the proposed accessory apartment is located in the rear of the residence, as shown in a photograph taken by Technical Staff (Exhibit 12, Attachment A).



The entrance to the apartment is not visible from the front of the dwelling and is accessed from a walkway leading from the side driveway area. The front of the house and the walkway are shown in photographs from the Technical Staff Report, shown below and on the next page:



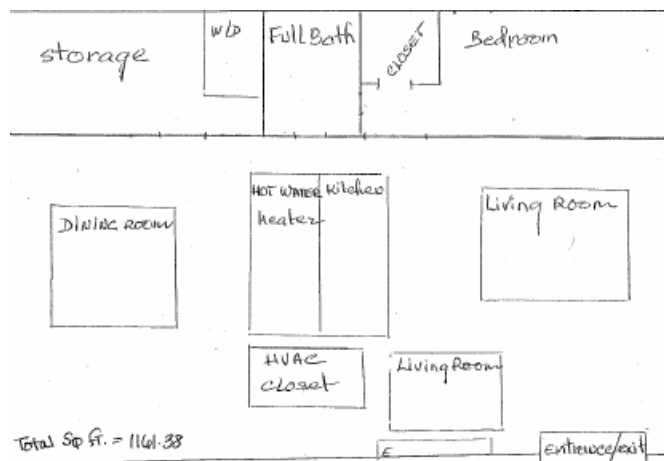
**Frontage on Boland Farm Road  
Exhibit 12, Attachment A**



**Detail of Walkway to Apartment Entrance  
In Rear (Exhibit 12, p. 9)**

Technical Staff advises that the existing lighting is adequate for the use and residential in character. Exhibit 12, p. 6. As Petitioners propose no external alternation to the existing house, Technical Staff advises that “the accessory apartment will not adversely affect the preservation of the residential character of the neighborhood.” Exhibit 12, p. 7.

The Housing Inspector reports that the living area under the revised floor plans (Exhibit 16) measures 1,161 square feet:



Mr. Goff testified that the floor plan originally submitted with the petition included 1,407 square feet of habitable space and exceeded the maximum permitted by the Zoning Ordinance. T. 15-16. *Montgomery County Code*, §59-G-2.00(a)(9). The reduction from the original 1,401 square feet was accomplished by eliminating a non-habitable room which is labeled on the revised plans as “storage”. Exhibit 16. Pictures of the interior of the accessory apartment, taken by the Housing Inspector (Exhibit 13) are shown below and on the following pages:



**Kitchen  
(Exhibit 13)**



**Living Room  
(Exhibit 13)**



**Bedroom  
(Exhibit 13)**



**Bathroom  
(Exhibit 13)**



**Bathroom  
(Exhibit 13)**

During the public hearing, the Petitioners requested that the Hearing Examiner leave the record open to permit them the opportunity to submit revised floor plans. T. 17-22. On April 18, 2011, the Hearing Examiner received revised floor plans accompanied by a memorandum from Mr. Goff indicating that the square footage of habitable area under the revised plans totaled 1,161 square feet. Exhibit 16. Based on the area of the apartment, the Housing Code Inspector determined that two unrelated individuals or a family of three could inhabit the unit. T. 14.

At the time the Department of Housing and Community Affairs (DHCA) initially inspected the property on February 7, 2011, Housing Code Inspector Mariana Butler reported her findings in a memorandum dated February 22, 2011 (Exhibit 13). Tr. 13-19.<sup>2</sup> Those findings are set forth below:

1. Install stove: a stove must include both top burners and a convector oven. A microwave oven is not a substitute. (Chapter 59-89).
2. Owner has a driveway that accommodates between 8-10 vehicles and there are two off-street parking spaces.
3. The Accessory Apartments habitable space is a total of 1407sq. ft. based on habitable square footage calculations.
4. Room two with the high window and laundry room can not be used at any time for sleeping due to inadequate window egress.

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<sup>2</sup> Mr. Goff assisted Ms. Butler with the initial inspection because Ms. Butler was unavailable for the hearing. T. 6.

Mr. Goff testified that a microwave was not a sufficient substitution for a convector oven. T. 14. Petitioners testified that they would install an oven meeting the requirements in the Housing Inspector's report. T. 4-10.

Technical Staff discussed the transportation issues at page 6 of their report (Exhibit 12), stating:

The Transportation Planning staff has indicated that the application meets the transportation-related requirements of the APF test. The proposed accessory apartment would generate a minimum number of peak-hour trips during the weekday morning (6:30 a.m. to 9:30 a.m.) and evening (4:00 p.m. to 7:00 p.m.) peak periods. Therefore, no traffic study is required to satisfy the Local Area Transportation Review and the Policy Area Mobility Review tests.

Moreover, the Transportation staff has indicated the existing off street parking area off Boland Farm Road is adequate to accommodate additional two parking spaces and additional on-street parking is available on Boland Farm Road. Approval of the subject special exception petition will not adversely affect the surrounding roadway system.

The Housing Inspector's report (Exhibit 13) indicates that the driveway can hold 8-10 cars, in addition two off-street parking spaces.

Technical Staff advised that lighting on the site was sufficient for the use and residential in character (Exhibit 12, p. 6):

Existing lighting on the property is adequate and consistent with the residential character of the neighborhood and satisfies this standard. A site inspection by staff reveals that there are four wall-mounted motion activated lights at the upper story-level—two on the southwest corner of the dwelling and two on the northwestern corner of the house. There are also 4 switch activated, wall mounted, porch lights—one on the northwestern portion of the side yard, one on the southwest portion of the side yard above the entrance to the accessory apartment (basement level), and two on the rear (south) side of the dwelling. In addition, one light post (switch activated) is located in the front yard. No new lighting will be added. The existing exterior lights are not likely to intrude into the adjoining residential properties.

### **C. Neighborhood Response**

There has been no response from the community, either positive or negative to the subject

petition. There is no opposition in the case.

#### **D. The Master Plan**

The subject property lies within the *2009 Germantown Employment Area Sector Plan*.

Exhibit 8(a). Technical Staff reports that there are no master plan recommendations relevant to this property or to accessory apartments in general. Exhibit 12, p. 4. The Master Plan reconfirms the existing R-200 Zone for the property. Exhibit 8(a), pp. 36, 50, 61. Technical Staff concluded that the special exception is consistent with the Sector Plan. Exhibit 12, p.4.

### **III. SUMMARY OF HEARING**

At the hearing, testimony was heard from Petitioner Mai T. Dang, on behalf of the Petitioners, and from Housing Code Inspector Robert Goff.

#### Mai T. Dang:

Petitioner executed an affidavit of posting (Exhibit 14). She adopted the findings in the Technical Staff Report (Exhibit 12), as Petitioners' own evidence. T. 6. She also agreed to meet all the conditions set forth in both the Technical Staff report and the Housing Inspector's report. T. 6, 14-20. Ms. Dang identified photographs she took of the property (Exhibits 9(a) and 9(b)), the landscape plan (Exhibit 5), and the survey plan. (Exhibit 4). Petitioners requested that the record be kept open in order to permit them an opportunity to revise the floor plan to bring the floor area under 1,200 square feet. T. 14-20.

#### Housing Code Inspector Robert Goff:

Housing Code Inspector, Robert Goff, testified that he assisted Mariana Butler in inspecting the February 7, 2011, and that Ms. Butler's findings are set forth in her report of February 22, 2011 (Exhibit 13). Tr. 13-14. Mr. Goff stated that the Petitioners must install a stove with top burners and a convector oven. T. 14. He also testified that the habitable space (under the original plans) was

1,407 square feet. T. 14. Room two with the high window and laundry room (marked as “storage” on the revised floor plans) could not be used at any time for sleeping because of inadequate window egress. T. 14. He testified that, based on the square footage, two unrelated individuals or a family of three could occupy the apartment. T. 14. He stated that Petitioners provided information to Technical Staff that the apartment was 650 square feet and therefore, that portion of the Technical Staff Report is incorrect. T. 15. He stated that he was willing to meet with the Petitioners at the property to attempt to find the most cost effective means of reducing the square footage of the apartment. T. 15.

#### **IV. FINDINGS AND CONCLUSIONS**

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met, that the use conforms to the applicable master plan, and that it is compatible with the existing neighborhood. Each special exception petition is evaluated in a site-specific context because a given special exception might be appropriate in some locations but not in others. The zoning statute establishes both general and specific standards for special exceptions, and the Petitioners have the burden of proof to show that the proposed use satisfies all applicable general and specific standards. Technical Staff concluded that Petitioners will have satisfied all the requirements to obtain the special exception, if they comply with the recommended conditions (Exhibit 12).

Weighing all the testimony and evidence of record under a “preponderance of the evidence” standard (Code §59-G-1.21(a)), the Hearing Examiner concludes that the instant petition meets the general and specific requirements for the proposed use, as long as Petitioners comply with the conditions set forth in Part V, below.

### **A. Standard for Evaluation**

The standard for evaluation prescribed in Code § 59-G-1.2.1 requires consideration of the inherent and non-inherent adverse effects on nearby properties and the general neighborhood from the proposed use at the proposed location. Inherent adverse effects are “the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations.” Code § 59-G-1.2.1. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are “physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site.” *Id.* Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. Exhibit 12. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with an accessory apartment. Characteristics of the proposed accessory apartment that are consistent with the “necessarily associated” characteristics of accessory apartments will be considered inherent adverse effects, while those characteristics of the proposed use that are not necessarily associated with accessory apartments, or that are created by unusual site conditions, will be considered non-inherent effects. The inherent and non-inherent effects thus identified must then be analyzed to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Technical Staff lists the following inherent characteristics of accessory apartments (Exhibit 12, p. 7):

- The existence of the apartment as a separate entity from the main living unit;

- The provision within the apartment of the necessary facilities and floor area to qualify as habitable space under applicable Code provisions;
- The provision of a separate entrance and walkway;
- The provision of sufficient parking and lighting; and
- The added activity from an additional household, including the potential for more pedestrian and vehicular traffic, and more noise.

The Hearing Examiner concludes that, in general, an accessory apartment has characteristics similar to a single-family residence, with only a modest increase in traffic, parking and noise that would be consistent with a larger family occupying a single-family residence. Thus, the inherent effects of an accessory apartment would include the fact that an additional resident (or residents) will be added to the neighborhood, with the concomitant possibility of an additional vehicle or two.

Technical Staff found (Exhibit 12, p. 7):

The proposed 650-square-foot accessory apartment is fully contained within the basement of the main dwelling. No external alteration or modification to the existing house to accommodate the accessory apartment is proposed. The accessory apartment will not adversely affect the preservation of the residential character of the immediate neighborhood

Adequate off-street parking is provided to serve both the primary residence and the accessory apartment. As noted, there is on-site parking for at least five cars and ample off-site parking along the property's frontage on Boland Farm Road.

Based on these findings, Staff concluded (Exhibit 12, p. 7):

The size, scale and scope of the proposed accessory apartment will not adversely affect the residential character of the neighborhood or result in any unacceptable noise, traffic disruption or environmental impacts. There are no unusual characteristics associated with the site. Thus, there are no non-inherent adverse effects associated with the application.

The Hearing Examiner agrees with Staff's assessment. Considering size, scale, scope, light, noise, traffic and environment, the Hearing Examiner concludes, as did the Technical Staff, that there would be no non-inherent adverse effects from the proposed use.

## **B. General Conditions**

The general standards for a special exception are found in Zoning Code §59-G-1.21(a). The

Technical Staff report, the Housing Code Inspector's report, the exhibits in this case and the testimony at the hearing provide ample evidence that the general standards would be satisfied in this case.

**Sec. 59-G-1.21. General conditions.**

**§5-G-1.21(a)** *-A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Conclusion: An accessory apartment is a permissible special exception in the R-200 Zone, pursuant to Code § 59-C-1.31.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

Conclusion: The proposed use complies with the specific standards set forth in § 59-G-2.00 for an accessory apartment, as outlined in Part C, below.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

Conclusion: The subject property is covered by the *Germantown Employment Area Sector Plan*, approved and adopted in 2009. Technical Staff advises that there are no Sector Plan recommendations specific to this site. Exhibit 12, p. 4. The Sector Plan reconfirms the existing R-

200 zoning for the property. Exhibit 8(a), pp. 36, 50, 61. Petitioners propose no external changes to the site. Thus, it is fair to say that the planned use, an accessory apartment in a single-family, detached home, is not inconsistent with the goals and objectives of the 2009 *Germantown Employment Area Sector Plan*.

*(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.<sup>3</sup>*

Conclusion: The accessory apartment will be located in an existing dwelling and will not require any external changes. It therefore will maintain its residential character. According to the Housing Inspector, there is more than adequate parking because the driveway may hold between 8-10 cars and there are 2 off-street parking spaces. Exhibit 13. Traffic conditions will not be affected adversely, according to Transportation Planning Staff. Based on these facts and the other evidence of record, the Hearing Examiner concludes, as did Technical Staff, that the proposed use will be in harmony with the general character of the neighborhood.

*(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: For the reasons set forth in answer to the previous section of this report, the special exception will not be detrimental to the use, peaceful enjoyment, economic value, or development of the surrounding properties or the defined neighborhood, provided that the special exception is operated in compliance with the listed conditions of approval.

*(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

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<sup>3</sup> This section was amended, as set forth here, by Zoning Text Amendment 10-13 (Ord. No. 17-01, effective 2/28/11).

Conclusion: As set forth in Section II.B of this Report, Technical Staff concluded that the lighting on the property is residential in character, sufficient for the use, and will not result in any glare on neighboring properties. Exhibit 12, p. 6. Petitioner testified at the hearing that the lighting over the apartment entrance will be a 60-watt bulb. Since the use will be indoors and residential, it will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site. The Hearing Examiner so finds.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.*

Conclusion: There is no evidence in the record that there are any other special exceptions in the surrounding area. The Hearing Examiner finds that the proposed special exception will not increase the number, scope, or intensity of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

Conclusion: The evidence supports the conclusion that the proposed use would not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site.

- (9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.*

Conclusion: Technical Staff indicates that the subject site will be adequately served by existing public services and facilities (Exhibit 12, p. 4), and the evidence supports this conclusion.

- (A) *If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.*
- (B) *If the special exception:<sup>4</sup>*
  - (i) *does not require approval of a new preliminary plan of subdivision; and*
  - (ii) *the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;*  
*then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.*

Conclusion: The special exception sought in this case would not require approval of a preliminary plan of subdivision and there is no currently valid determination of the of adequacy of public facilities for the site, taking into account the impact of the proposed special exception. Therefore, the Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the applicable Growth Policy standards. These standards include Local Area Transportation Review (LATR) and Policy Area Mobility Review (PAMR). As indicated in Part II. B. of this report, Transportation Planning Staff did do such a review, and concluded that the minimal number of trips generated did not require a traffic study for LATR or PAMR. Exhibit 12, p. Attachment B. Therefore, the Transportation Staff concluded, as does the Hearing Examiner, that the instant petition meets all the applicable Growth Policy standards.

- (C) *With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.*

Conclusion: Based on the evidence of record, especially the Technical Staff's conclusion that the

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<sup>4</sup> This section was amended, as set forth here, by Zoning Text Amendment 10-13 (Ord. No. 17-01, effective 2/28/11).

proposed special exception “will not adversely affect the surrounding roadway system” (Exhibit 12, Attachment B), the Hearing Examiner finds that this standard has been met.

### **C. Specific Standards**

The testimony and the exhibits of record, especially the Technical Staff Report (Exhibit 12), provide sufficient evidence that the specific standards required by Section 59-G-2.00 are satisfied in this case, as described below.

#### ***Sec. 59-G-2.00. Accessory apartment.***

*A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements:*

##### ***(a) Dwelling unit requirements:***

- (1) Only one accessory apartment may be created on the same lot as an existing one-family detached dwelling.*

**Conclusion:** Only one accessory apartment is proposed.

- (2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:*
  - (i) The lot is 2 acres or more in size; and*
  - (ii) The apartment will house a care-giver found by the Board to be needed to provide assistance to an elderly, ill or handicapped relative of the owner-occupant.*

**Conclusion:** The apartment is located in the basement of an existing house, and therefore shares a wall in common, as required for a lot of this size (under an acre).

- (3) An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.*

Conclusion: No new addition or extension of the main dwelling is proposed. The accessory apartment will be located in an existing dwelling.

*(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception.*

Conclusion: According to SDAT, the house was built in 2003. Exhibit 12, Attachment C. It therefore meets the “5 year old” requirement.

*(5) The accessory apartment must not be located on a lot:*

- (i) That is occupied by a family of unrelated persons; or*
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or*
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.*

Conclusion: The proposed use does not violate any of the provisions of this subsection.

*(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved.*

Conclusion: Access to the accessory apartment is through an existing back entrance to the home, on the lower level. There will thus be no change to the home’s residential appearance.

*(7) All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.*

Conclusion: Petitioners are not proposing any new construction or modifications to the exterior of the dwelling.

*(8) The accessory apartment must have the same street address (house number) as the main dwelling.*

Conclusion: The accessory apartment will have the same address as the main dwelling.

*(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet.*

Conclusion: The Housing Inspector advises that the revised floor plans submitted by the Petitioner

show that the accessory apartment will contain 1,161 square feet of habitable space. Exhibit 16. SDAT records report that the square footage of the existing home is 3,250 square feet, more than double the size of the proposed apartment. Exhibit 12, Attachment C. Based on this evidence, the Hearing Examiner finds that the special exception petition meets these requirements.

**59-G § 2.00(b) *Ownership Requirements***

- (1) *The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.*

Conclusion: The Petitioners will live in one part of the dwelling.

- (2) *Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the Petitioner, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.*

Conclusion: According to the SDAT records (Exhibit 12, Attachment C), Petitioners purchased the home on February 11, 2003. The one-year rule has therefore been satisfied.

- (3) *Under no circumstances, is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.*

Conclusion: The Petitioners will receive compensation for only one dwelling unit as a condition of the special exception.

- (4) *For purposes of this section owner means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the Board.*

Conclusion: The Petitioners are the owners of the property.

- (5) *The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by an elderly person who has been a continuous tenant of the accessory apartment for at least 20 years.*

Conclusion: Not applicable.

**59-G § 2.00(c) Land Use Requirements**

*(1) The minimum lot size must be 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one-family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.*

Conclusion: The subject lot is approximately 35, 982 square feet in size, and therefore satisfies this requirement. Technical Staff advises that the application meets all development standards of the R-200 Zone as summarized below (Exhibit 12, p. 5):

<b>Current Development Standard: R-200</b>	<b>Standard</b>	<b>Proposed</b>
Minimum Lot Area	20,000 sf	35,982 SF(.83 ac)
Minimum Lot width: <ul style="list-style-type: none"> <li>• @ Front building line</li> <li>• @ Street line</li> </ul>	100 ft 25 ft	219± ft * 311.39 ±ft*
Minimum Building Setback: Front Side <ul style="list-style-type: none"> <li>▪ One side</li> <li>▪ Sum of both sides</li> <li>▪ Rear</li> </ul>	40 ft (EBL)  12 ft 25 ft 30 ft	46.5 ±ft*  40 ±t * NA ft 64 ±ft*
Maximum Building Height	50 ft	30±
Maximum Building Coverage	25%	9%

\*Based on information provided on a reduced copy of drawing provided by the applicants.

Based on the evidence in this case, the Hearing Examiner concludes that this standard has been met.

*(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use(see also section G-1.21 (a)(7) which concerns excessive concentration of special exceptions in general).*

Conclusion: As previously stated in this report, the Hearing Examiner concludes that the proposed

special exception will not create an excessive concentration of similar uses since there is no evidence of other special exceptions in the neighborhood.

*(3) Adequate parking must be provided. There must be a minimum of 2 off-street parking spaces unless the Board makes either of the following findings:*

- (i) More spaces are required to supplement on-street parking; or*
- (ii) Adequate on-street parking permits fewer off-street spaces. Off-street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right-of-way line.*

Conclusion: As discussed in Part II.B. of this report, there are between 8 and 10 spaces on Petitioners' driveway and at least two on-street parking spaces. Technical Staff concluded there was sufficient parking available to prevent any adverse impact on the surrounding roadway system (Exhibit 12, Attachment C) as does the Hearing Examiner.

#### **D. Additional Applicable Standards**

Not only must an accessory apartment comply with the zoning requirements as set forth in 59-G, it must also be approved for habitation by the Department of Housing and Community Affairs. As discussed in Part II. B. of this Report, the Housing Code Inspectors' reports (Exhibits 13 and 16) notes certain issues, and recommends that occupation of the accessory apartment be limited to no more than two unrelated persons or a family of three. As mentioned above, Petitioners have agreed to meet all conditions, and will make the repairs required by the Housing Code Inspector.

#### **V. RECOMMENDATION**

Based on the foregoing analysis, I recommend that Petition No. S-2789, which seeks a special exception for an accessory apartment to be located at 20601 Boland Farm Road, Germantown, Maryland, be GRANTED, with the following conditions:

1. The Petitioners are bound by their testimony, representations and exhibits of record;

2. The Petitioners must make the repairs needed to comply with the conditions set forth in the Memorandum of Marianna Butler, Housing Code Inspector, Division of Housing and Code Enforcement (Exhibit 13):
  - a. Install stove: a stove must include both top burners and a convector oven. A microwave is not a substitute.
3. Based on habitable space in the apartment (1,161 square feet), no more than two unrelated persons or a family of three may reside in the accessory apartment;
4. Petitioners must occupy one of the dwelling units on the lot on which the accessory apartment is located;
5. Petitioners must not receive compensation for the occupancy of more than one dwelling unit;
6. The room labeled on the floor plan (Exhibit 16) as “storage”, may not be used for the accessory apartment.
7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits and use and occupancy permits, necessary to occupy the special exception premises and operate the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and premises comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

Dated: June 22, 2011.

Respectfully submitted,

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Lynn A. Robeson  
Hearing Examiner